

***Superseded 2/19/2014***

**53-3-223 Chemical test for driving under the influence -- Temporary license -- Hearing and decision -- Suspension and fee -- Judicial review.**

- (1)
  - (a) If a peace officer has reasonable grounds to believe that a person may be violating or has violated Section 41-6a-502, prohibiting the operation of a vehicle with a certain blood or breath alcohol concentration and driving under the influence of any drug, alcohol, or combination of a drug and alcohol or while having any measurable controlled substance or metabolite of a controlled substance in the person's body in violation of Section 41-6a-517, the peace officer may, in connection with arresting the person, request that the person submit to a chemical test or tests to be administered in compliance with the standards under Section 41-6a-520.
  - (b) In this section, a reference to Section 41-6a-502 includes any similar local ordinance adopted in compliance with Subsection 41-6a-510(1).
- (2) The peace officer shall advise a person prior to the person's submission to a chemical test that a test result indicating a violation of Section 41-6a-502 or 41-6a-517 shall, and the existence of a blood alcohol content sufficient to render the person incapable of safely driving a motor vehicle may, result in suspension or revocation of the person's license to drive a motor vehicle.
- (3) If the person submits to a chemical test and the test results indicate a blood or breath alcohol content in violation of Section 41-6a-502 or 41-6a-517, or if a peace officer makes a determination, based on reasonable grounds, that the person is otherwise in violation of Section 41-6a-502, a peace officer shall, on behalf of the division and within 24 hours of arrest, give notice of the division's intention to suspend the person's license to drive a motor vehicle.
- (4)
  - (a) When a peace officer gives notice on behalf of the division, the peace officer shall:
    - (i) take the Utah license certificate or permit, if any, of the driver;
    - (ii) issue a temporary license certificate effective for only 29 days from the date of arrest; and
    - (iii) supply to the driver, in a manner specified by the division, basic information regarding how to obtain a prompt hearing before the division.
  - (b) A citation issued by a peace officer may, if provided in a manner specified by the division, also serve as the temporary license certificate.
- (5) As a matter of procedure, a peace officer shall send to the division within 10 calendar days after the day on which notice is provided:
  - (a) the person's license certificate;
  - (b) a copy of the citation issued for the offense;
  - (c) a signed report in a manner specified by the division indicating the chemical test results, if any; and
  - (d) any other basis for the peace officer's determination that the person has violated Section 41-6a-502 or 41-6a-517.
- (6)
  - (a) Upon request in a manner specified by the division, the division shall grant to the person an opportunity to be heard within 29 days after the date of arrest. The request to be heard shall be made within 10 calendar days of the day on which notice is provided under Subsection (5).
  - (b)
    - (i) Except as provided in Subsection (6)(b)(ii), a hearing, if held, shall be before the division in:
      - (A) the county in which the arrest occurred; or
      - (B) a county that is adjacent to the county in which the arrest occurred.

- (ii) The division may hold a hearing in some other county if the division and the person both agree.
  - (c) The hearing shall be documented and shall cover the issues of:
    - (i) whether a peace officer had reasonable grounds to believe the person was driving a motor vehicle in violation of Section 41-6a-502 or 41-6a-517;
    - (ii) whether the person refused to submit to the test; and
    - (iii) the test results, if any.
  - (d)
    - (i) In connection with a hearing the division or its authorized agent:
      - (A) may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers; or
      - (B) may issue subpoenas for the attendance of necessary peace officers.
    - (ii) The division shall pay witness fees and mileage from the Transportation Fund in accordance with the rates established in Section 78B-1-119.
  - (e) The division may designate one or more employees to conduct the hearing.
  - (f) Any decision made after a hearing before any designated employee is as valid as if made by the division.
- (7)
- (a) If, after a hearing, the division determines that a peace officer had reasonable grounds to believe that the person was driving a motor vehicle in violation of Section 41-6a-502 or 41-6a-517, if the person failed to appear before the division as required in the notice, or if a hearing is not requested under this section, the division shall:
    - (i) if the person is 21 years of age or older at the time of arrest and the arrest was made on or after July 1, 2009, suspend the person's license or permit to operate a motor vehicle for a period of:
      - (A) 120 days beginning on the 30th day after the date of arrest for a first suspension; or
      - (B) two years beginning on the 30th day after the date of arrest for a second or subsequent suspension for an offense that occurred within the previous 10 years; or
    - (ii) if the person is under 21 years of age at the time of arrest and the arrest was made on or after May 14, 2013:
      - (A) suspend the person's license or permit to operate a motor vehicle:
        - (I) for a period of six months, beginning on the 30th day after the date of arrest for a first suspension; or
        - (II) until the person is 21 years of age or for a period of two years, whichever is longer, beginning on the 30th day after the date of arrest for a second or subsequent suspension for an offense that occurred within the previous 10 years; or
      - (B) deny the person's application for a license or learner's permit:
        - (I) for a period of six months for a first suspension, if the person has not been issued an operator license; or
        - (II) until the person is 21 years of age or for a period of two years, whichever is longer, beginning on the 30th day after the date of arrest for a second or subsequent suspension for an offense that occurred within the previous 10 years.
  - (b) The division shall deny or suspend a person's license for the denial and suspension periods in effect:
    - (i) prior to July 1, 2009, for an offense that was committed prior to July 1, 2009;
    - (ii) from July 1, 2009, through June 30, 2011, if:
      - (A) the person was 20 years 6 months of age or older but under 21 years of age at the time of arrest; and

- (B) the conviction under Subsection (2) is for an offense that was committed on or after July 1, 2009, and prior to July 1, 2011; or
  - (iii) prior to May 14, 2013, for an offense that was committed prior to May 14, 2013.
- (c)
- (i) Notwithstanding the provisions in Subsection (7)(a)(i)(A), the division shall reinstate a person's license prior to completion of the 120 day suspension period imposed under Subsection (7)(a)(i)(A):
    - (A) immediately upon receiving written verification of the person's dismissal of a charge for a violation of Section 41-6a-502 or 41-6a-517, if the written verification is received prior to completion of the suspension period; or
    - (B) no sooner than 60 days beginning on the 30th day after the date of arrest upon receiving written verification of the person's reduction of a charge for a violation of Section 41-6a-502 or 41-6a-517, if the written verification is received prior to completion of the suspension period.
  - (ii) Notwithstanding the provisions in Subsection (7)(a)(i)(A) or (7)(b), the division shall reinstate a person's license prior to completion of the 120-day suspension period imposed under Subsection (7)(a)(i)(A) immediately upon receiving written verification of the person's conviction of impaired driving under Section 41-6a-502.5 if:
    - (A) the written verification is received prior to completion of the suspension period; and
    - (B) the reporting court notifies the Driver License Division that the defendant is participating in or has successfully completed the program of a driving under the influence court as defined in Section 41-6a-501.
  - (iii) If a person's license is reinstated under this Subsection (7)(c), the person is required to pay the license reinstatement fees under Subsections 53-3-105(23) and (24).
  - (iv) The driver license reinstatements authorized under this Subsection (7)(c) only apply to a 120 day suspension period imposed under Subsection (7)(a)(i)(A).
- (8)
- (a) The division shall assess against a person, in addition to any fee imposed under Subsection 53-3-205(12) for driving under the influence, a fee under Section 53-3-105 to cover administrative costs, which shall be paid before the person's driving privilege is reinstated. This fee shall be cancelled if the person obtains an unappealed division hearing or court decision that the suspension was not proper.
  - (b) A person whose license has been suspended by the division under this section following an administrative hearing may file a petition within 30 days after the suspension for a hearing on the matter which, if held, is governed by Section 53-3-224.